

Bankruptcy Practice Tips

How to Reduce Headaches and Heartburn in Attorneys,
the Clerk's Office, and Judges.

KCBBA/TABC/WBA CLE 2/7/2014

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New Rules and Forms

These became effective December 1, 2013.

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New Fee for Motion to Sell Free and Clear: Who Must Pay?

- Bankruptcy Court Miscellaneous Fee Schedule, ¶ 19 (eff. Dec. 1, 2013).
 - “For the following motions, \$176: . . . To sell property of the estate free and clear of liens under 11 U.S.C. § 363(f).”
- If Section 363(f) applies, you must pay the fee.
- There is no exception for anyone except for the United States of America.
 - The Miscellaneous Fee Schedule states: “The United States should not be charged fees under this schedule,” with limited exceptions.

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New Fee for Motion to Sell Free and Clear: What if I Am the Debtor, Not the Trustee?

- Section 363(f) speaks in terms of a sale by the **Trustee**.
 - “The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate only if”
- Therefore, Trustee motions are expressly *included* within the scope of the statute and are subject to the fee.
- The statutory reference to “trustee” does NOT always excuse Debtors from the obligation to pay the fee.
 - Debtors are often deemed to be Trustees for purposes of Section 363(f).

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Motion to Sell Free and Clear: Debtors Who Have 363(f) Trustee Powers.

- Chapter 11
 - 11 U.S.C. § 1107(a): Subject to certain limitations “a debtor in possession shall have **all the rights, other than** the right to compensation . . . , and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.”
- Chapter 12
 - 11 U.S.C. 1203: “Subject to such limitations as the court may prescribe, a debtor in possession shall have **all the rights, other than** the right to compensation . . . , and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor’s farm or commercial fishing operation.”
- Chapter 13
 - 11 U.S.C. 1303: “Subject to any limitations on a trustee under this chapter, the debtor **shall have, exclusive of the trustee, the rights and powers** of a trustee **under** sections 363(b), 363(d), 363(e), **363(f)**, and 363(l), of this title.”

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Motion to Sell Free and Clear: Who Lacks Trustee Powers Under 363(f)?

- Chapter 7
 - “Unlike a chapter 7 debtor, chapter 13 debtors have certain powers otherwise reserved to the trustee, ‘the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.’” In re Thompson, 499 B.R. 908, 912 (S.D. Ga. 2013), quoting 11 U.S.C. § 1303 and citing In re Bell, 279 B.R. 890, 898, n.7 (Bankr. N.D. Ga. 2002).
- Key Question: Is the property an exempt asset?
 - If Exempt: Debtor can sell without a 363(f) motion, so NO fee is required.
 - But Debtor does NOT receive the benefit of bankruptcy law sales free and clear. It would be like a normal sale transaction.
 - If Not Exempt: The asset is part of the estate and only the Trustee can sell it pursuant to 363(f), so a fee IS required.

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New Fee for Motion to Sell Free and Clear: When Should You Pay It?

- Pay the new \$176 fee for all Motions to Sell Free and Clear when you file the Motion.
- If you don't pay when you file the Motion, the following symptoms **may** result:
 - The Case Administrator contacts you to remind you of the fee.
 - The Clerk issues an order to correct to you and your client.
 - The Judge may deny the motion or make it contingent upon first paying the fee.
 - The sale may be delayed or fall through.
 - Ethics complaint and discipline. *Cf. Matter of Metz*, 266 Kan. 118, 965 P.2d 821 (Kan. 1998) (1 year suspension for bankruptcy filing fee "paid" with bounced check drawn on trust account).

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New Forms: Roger, Copy That.

- Follow the Recently Revised Instructions on Forms to Order Transcripts and Digital Audio Recordings of Hearings.
 - Electronically file the completed forms.
 - Submit hard copies *only if* you do not have rights to file electronically.
 - For audio recordings, use a separate form for each date.
- Fillable forms and many others are available on our website at: <http://www.ksb.uscourts.gov/index.php/resources/court-forms>
 - Form AO435KS: Transcript Order Form.
 - Form AO436KS: Digital Recording Order.

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Technology

How to Leverage Cutting Edge Developments.

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Hyperlinks

How to Let Technology Do the Heavy Lifting For Everyone.

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New Hyperlinking Tool: Makes the Law Easy for the Judge to Access.

- How to Win Your Case:
 - Prove FACTS.
 - Prove LAW.
 - EXPLAIN why the LAW you cite applies to the FACTS you assert.
- Hyperlinks Help Convince the Judge.
 - Easier to see evidence of the facts you assert.
 - Easier to see the legal authority you cited.
 - The Judge's time and energy can focus on understanding your argument, rather than trying to find proof of what you claim.

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New Hyperlinking Tool: Makes the Law Easy for the Judge to Access.

- New hyperlinking tools are now available to the Judges.
- They will create hyperlinks in substantive documents, including:
 - Motions.
 - Briefs.
 - Not schedules or other bulky documents usually devoid of legal authority.
- The only action required of attorneys:
 - Use recognized citation formats.
 - Electronically file only text-based .pdf documents (not image-based .pdf documents).

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Which Do You Want the Judge to See? With Hyperlinks: Without Hyperlinks:

The image shows two side-by-side versions of a legal document. The left version, titled 'With Hyperlinks:', shows a text block with several footnotes. Footnote 9 contains a hyperlink: [Fed. R. Civ. P. 8\(a\), ECF 1](#). Footnote 10 contains a hyperlink: [Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 \(2007\)](#). Footnote 11 contains a hyperlink: [Id. at 570](#). Footnote 12 contains a hyperlink: [Burnet v. Mortg. Elec. Registration Sys., 706 F.3d 1231, 1236 \(10th Cir. 2013\)](#). Footnote 13 contains a hyperlink: [Bryson v. Gonzales, 534 F.3d 1282, 1286 \(10th Cir. 2008\)](#). Footnote 14 contains a hyperlink: [Ridge at Red Hawk, L.L.C. v. Schneider, 493 F.3d 1174, 1177 \(10th Cir. 2007\)](#). The right version, titled 'Without Hyperlinks:', shows the same text block but with the hyperlinks removed, replaced by plain text citations: *Fed. R. Civ. P. 8(a), ECF 1*, *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)*, *Id. at 570*, *Burnet v. Mortg. Elec. Registration Sys., 706 F.3d 1231, 1236 (10th Cir. 2013)*, *Bryson v. Gonzales, 534 F.3d 1282, 1286 (10th Cir. 2008)*, and *Ridge at Red Hawk, L.L.C. v. Schneider, 493 F.3d 1174, 1177 (10th Cir. 2007)*.

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Hyperlinks: Use Recognized Citation Formats.

- Use Bluebook for *legal* authority, such as cases, statutes, regulations, and constitutions.
- Cite CM/ECF documents in the same case:
 - ECF or Doc. [docket number], [optional page number], i.e., **ECF ##** or **Doc. ##**.
 - E.g., Motion to Dismiss, **ECF 30, 5** [links to docket number 30 at page 5].
 - E.g., Resp. to Mot. To Dismiss, **Doc. 35** [links to docket number 35].
 - Do not use “ECF No. ##” in Bluebook Rule B7.1.4. Omit the “No.”
- Cite CM/ECF documents in other Bankr. D. Kan. cases as:
 - *Case Name*, Bankr. D. Kan. ECF [case number], [docket number], [optional page number].
 - E.g., *In re Case Name*, Bankr. D. Kan. **ECF ##-#####, ##**.
 - For pinpoint citations use: *In re Case Name*, Bankr. D. Kan. **ECF ##-#####, ##, ##**.

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Hyperlinks: File Properly Format Pleadings.

- File briefs and motions electronically. D. Kan. LBR 5005.1(c).
- File .pdf motions and briefs that have been generated as a text-based document.
- Benefits of text-based .pdf documents:
 - Considerably less disk space is required to store text-based than image-based.
 - Your systems will require less disk space/expense to save and archive those files.
 - Requires less disk space/expense to the court.
 - Searchability
 - Text-based are readily and reliably searchable.
 - Image-based are not readily searchable, and even when converted to a searchable format (using OCR) the results are unreliable.
 - The automatic hyperlinks program can only create hyperlinks in text-based briefs and motions.

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Hyperlinks: Avoid Formatting Pitfalls.

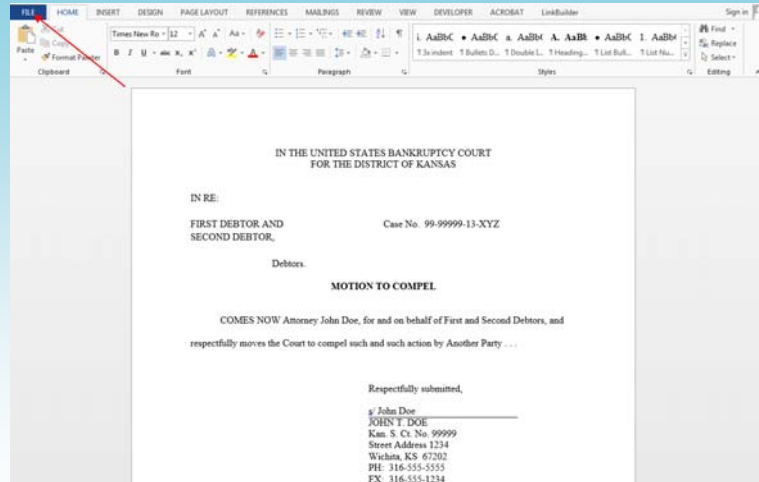
- Avoid using freeware to convert documents to .pdf. Many freeware programs create links to advertisements in the documents you create.
- Avoid filing image-based .pdf documents.
 - Image-based documents are often those that were printed and then scanned.
 - Some imaged-based documents are inevitable, such as:
 - Photographs
 - Documentary exhibits that you did not create
 - Hand-signed affidavits and declarations.
- Do NOT print a motion or brief, scan it and then file it.
- Use the Print to .pdf feature in your word processor.

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Print to .pdf Using Word®

Step 1:

Select FILE tab.

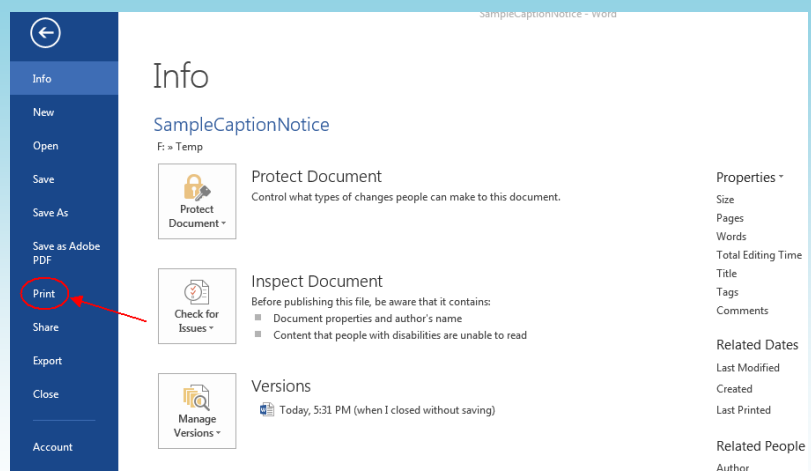


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Print to .pdf Using Word®

Step 2:

Select "Print" Option.



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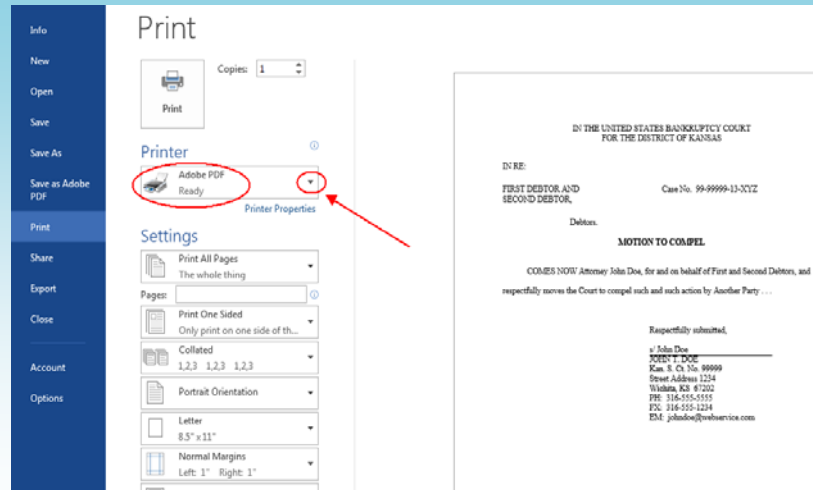
Print to .pdf Using Word®

Step 3:

Click the drop down arrow in the right-hand side of the Printer box.

Step 4:

Select "Adobe PDF" from the list of available printers.

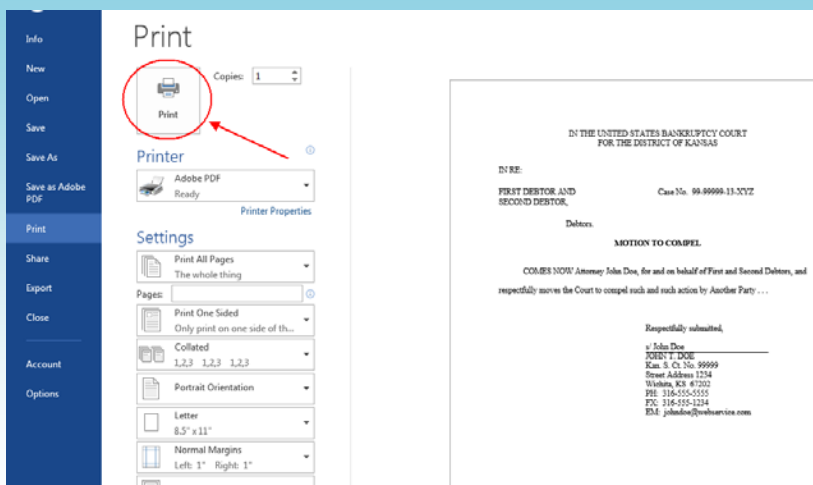


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Print to .pdf Using Word®

Step 5:

Click the Print button.



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Print to .pdf Using Word®

Step 6:

Select the location where you want to save the file.

Step 7:

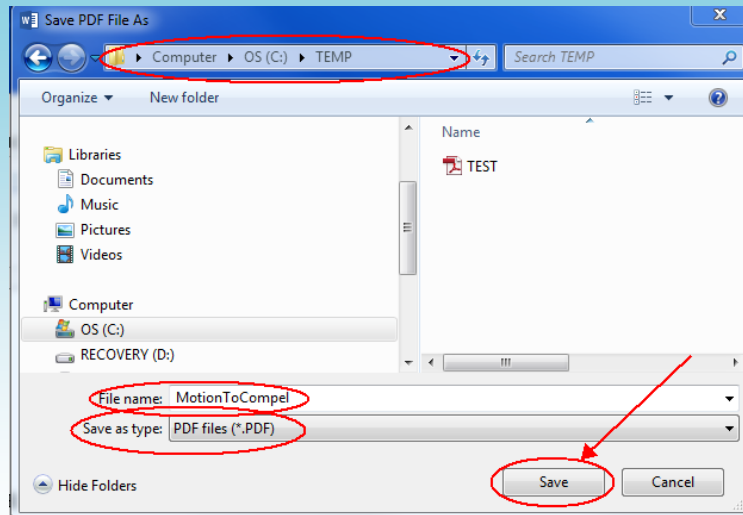
Type a file name for the document.

Step 8:

Be sure the "Save as type" indicates "PDF files (*.PDF)."

Step 9:

Click "Save" button.



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Print to .pdf Using WordPerfect®

Step 1:

Select File Tab AND

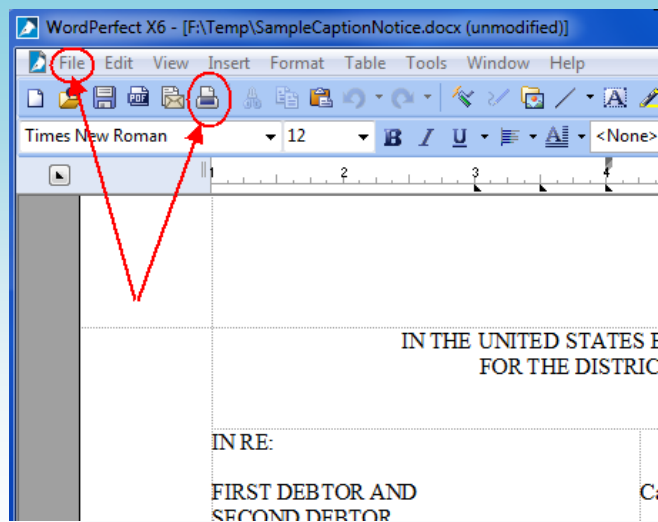
Select "Print" option from drop down list.

OR

Click the Print button in the Toolbar.

OR

Type CTL-P.



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Print to .pdf Using WordPerfect®

Step 2:

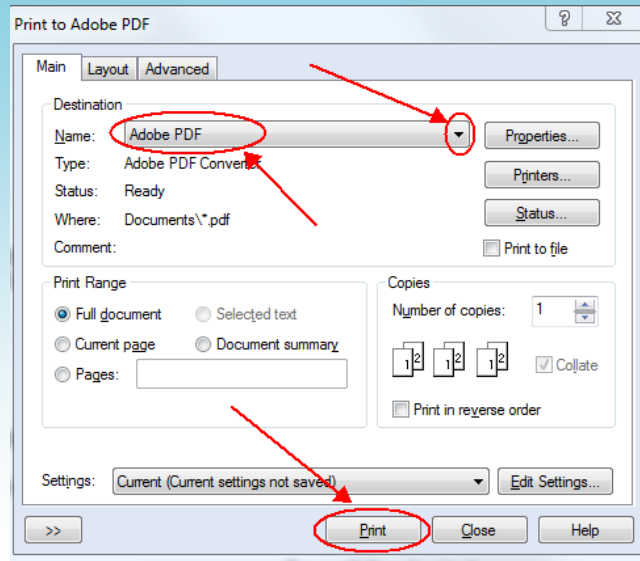
In the pop-up box, click the drop down arrow in the right-hand side of the Name box.

Step 3:

Select "Adobe PDF" from the list of available printers.

Step 4:

Click the Print button.



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Print to .pdf Using WordPerfect®

Step 6:

Select the location where you want to save the file.

Step 7:

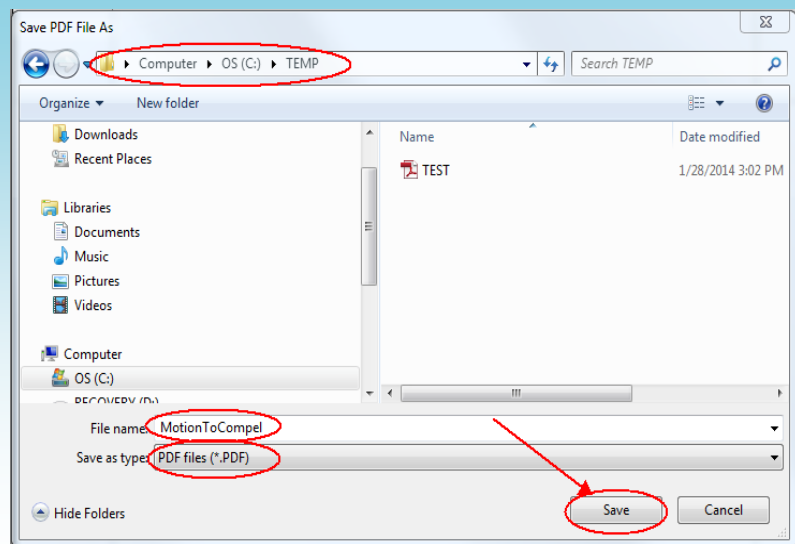
Type a file name for the document in the File name box.

Step 8:

Be sure the "Save as type" indicates "PDF files (*.PDF)."

Step 9:

Click "Save" button.



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Standing Orders Library

New Official Repository for Standing Orders and General Orders in CM/ECF.

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New Bankruptcy Standing Orders Library:

- Standing Orders and General Orders currently in effect will be filed by the Court in CM/ECF in a case captioned:
 - *USBC Orders*, Bankr. D. Kan. ECF 14-00001.
 - Cite as: *USBC Orders*, Bankr. D. Kan. ECF 14-00001, [docket #], [page #].
- Future Orders will be published there as they are issued.
- When Orders are abrogated, they will be identified as such in the docket text.
- Why do this?

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Benefits of Standing Orders Case in CM/ECF:

- CM/ECF Filers can subscribe to the case to receive automatic electronic CM/ECF notification every time a new document is filed.
- Real-time alerts will be sent every time a new Standing Order or General Order is issued – just like an alert that you receive every time someone files a new pleading in a case where you represent a party.
- Depending upon how your alerts are set up, you can receive:
 - Instant notification for each new order, or
 - Notification as part of your daily summary.
- CM/ECF can provide a “docket report” with an up-to-date, at-a-glance listing of all Standing Orders in effect on or after Jan. 1, 2014, and will indicate if those are later abrogated.

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“Subscribing” to the Standing Orders Library

Step 1:

Login to your CM/ECF account.

Step 2:

Click on the “Utilities” tab.

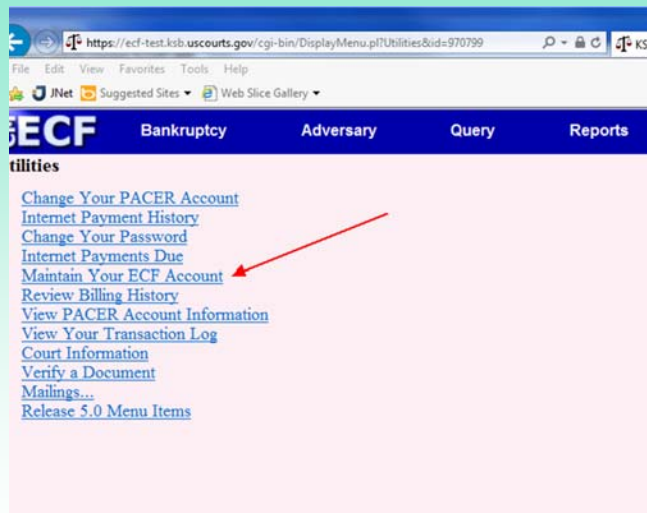


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“Subscribing” to the Standing Orders Library

Step 3:

Click on the “Maintain Your ECF Account” item.



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“Subscribing” to the Standing Orders Library

Step 4:

Click the “Email Information” button.

A screenshot of the 'Maintain User Account' form in the ECF system. The form contains various input fields for user information, including Last name (Attorney), First name (Hugh), Middle name, Generation, Title, Type aty, Office, Address 1 (321 N Main), Address 2, Address 3, City (Wichita), State (KS), Zip (67202), Country (USA), County (SEDGWICK-KS (20173)), Phone, Fax, SSN/ITIN, Tax Id/EIN, Bar ID, Bar status, Initials, and DOB. There are also fields for Mail group, AO code, and Person end date. At the bottom of the form, there are two buttons: 'Email information' (highlighted with a red arrow) and 'More user information...'. Below these buttons are 'Submit' and 'Clear' buttons.

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“Subscribing” to the Standing Orders Library

Step 5:

Click on the “Send notices in these additional cases” box to insert a check mark.

Step 6:

Enter the case number, which in this instance is “14-00001.”

Step 7:

Click on the “Find This Case” button.

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“Subscribing” to the Standing Orders Library

Note: The case number changes to 6:14-mp-1 (merely another way of identifying case no. 14-00001, which is a Wichita case filed in 2014 as a miscellaneous proceeding and is case 00001).

Step 8:

Click the “Return to Account screen” button.

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“Subscribing” to the Standing Orders Library

Step 9:

Click the “Submit” button to save your changes.

WARNING: If you forget to click “Submit” then you will lose your changes.

The screenshot shows the 'Maintain User Account' form in the ECF system. The form includes fields for: Last name (Atorney), First name (Hugh), Middle name, Generation, Title, Type atty, Office, Address 1 (321 N Main), Address 2, Address 3, City (Wichita), State (KS), Zip (67202), Country (USA), County (SEDGWICK-KS (20173)), Phone, Fax, SSN/ITIN, Tax Id/EIN (12-1234567), Bar ID, Bar status, Mail group, Initials, Initials, and Person end date. At the bottom left, the 'Submit' button is circled in red, with a red arrow pointing to it.

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“Subscribing” to the Standing Orders Library

Last Step: Review the confirmation screen. It will show:

- Notification to your primary email is “on.”
- List the case(s) for which you are “subscribing.”
- List the primary email address to which notifications are sent.
- List the secondary email address (if any) to which notifications are sent.

The screenshot shows the confirmation screen after updating the user record. The screen displays the following information:

- Updating person record... Successfully updated Hugh Attorney
- Participant records were not altered.
- Set up automatic email notification complete for Hugh Attorney
- Send Notification in all cases for which you represent a party = on
- Send Notification to primary email address = on
- Case list: [14-00001 USBC Orders](#)
- Email notice of electronic filings for selected cases= on
- Summary email = off
- Primary email address: [Hugh.Attorney@lawfirm.com](#)
- Secondary email address: [Hugh.Second.Address@private.com](#)
- Formatting of notices = HTML (Internet email)
- No user update requested
- [Return to User Maintenance](#)

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Benefits of Standing Orders Case in CM/ECF

- Hyperlinks automatically generate behind the scenes.
- All you have to do is cite Standing Orders and General Orders in briefs by citing the *USBC Orders* case and docket number.
- To allow hyperlinks to automatically generate, cite to the Standing Orders Library case.
 - E.g., *Conduit Mortgage Payments in Chapter 13*, S.O. 11-3, § V.A, ***USBC Orders, Bankr. D. Kan. ECF 14-00001, 3, 3.*** [Will create a link to case number 14-00001, Document 3, page 3.]
- Judges will be able to click the citation and quickly see the authority you want them to see.

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Save Your Money. See Standing Orders for Free.

- Beware: If you view the Standing Order in CM/ECF, you will incur a PACER charge because there is no “free look” in cases that you monitor.
- Money-Saving Hint: To avoid the PACER charge, when you get the notice alerting you that a new Standing Order was filed, just view it on our free website:
 - <http://www.ksb.uscourts.gov/index.php/court-info/rules>
- By the way, archived versions of old local rules are available for free viewing at:
 - <http://www.ksb.uscourts.gov/index.php/court-info/rules/1871-archives>

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Assistance

Technology the Clerk's Office Will Use to Help You Better.

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How We Can Help.

- Telephone: Call the Clerk's Office for procedural help or technical filing issues (not legal advice).
- In-Person: Clerk's Office can schedule assistance in the Kansas City, Topeka, or Wichita courthouses regarding:
 - CM/ECF.
 - Courtroom Technology.
 - Court Equipment in the courtroom.
 - Your Equipment in the courtroom.
- New Option: Remote training for you and your staff while you remain in your office at your own computer.

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Show Me With TeamViewer

- We can set up remote assistance and/or training that will allow us to share screens with you in real time.
- How to Share Screens:
 - Download the freeware version of TeamViewer onto the computer you will be using. (Be aware that some firewalls and server configurations may reject screen sharing software due to security concerns.)
 - Contact the Clerk's Office.
 - Options:
 - We can see your screen, or
 - You can see our screen.

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Best Practices

What to do and what to avoid.

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Practices to Avoid: In Quick Files/Emergency Filings.

- Quick Files/Emergency Filings with incomplete documentation and/or unpaid filing fees.
- Even waiting until the next morning to pay the filing fee or file key documents (credit counseling certificate, pay stubs, etc.) requires significantly more time and effort for both attorneys and the Clerks to
 - (1) set up a monitoring system
 - (2) follow up, and
 - (3) confirm compliance.
- Can create problems for you as attorneys because it may draw an order to correct that goes to the client.

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Practices to Avoid: CM/ECF Information About Parties and Attorneys.

- Do NOT create a new record for parties or attorneys who already exist in CM/ECF drop down lists.
 - Select the appropriate party/attorney from the existing drop down lists.
- If attorneys have a change of address or change of telephone number, call the Clerk's Office to help you make the changes correctly.

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Practices to Adopt: Debtors' Names in Case Captions.

- In the case captions of all documents you file, list the Debtor(s)' names exactly as they appear in the CM/ECF case name.
 - Especially when filing notice of a Debtor's change of address.
 - Otherwise, it creates additional steps for the Clerk's Office when editing.

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Avoid Delays During Emergencies.

- Expedited Hearings
 - E.g., Motion to Extend Automatic Stay (requires hearing within 30 days of petition).
 - Call the Clerk's Office immediately after filing the motion to expedite hearing to obtain appropriate guidance.
 - Call the Clerk's Office where the case is pending.
 - If the case was filed in Topeka, call the Topeka Clerk's Office.

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Avoid Delays To Filing Fee Accommodations.

- Application for Waiver of Chapter 7 Filing Fee
 - File the Schedules promptly.
 - The Application for Waiver may not be addressed until after the Schedules are filed.
- Chapter 13 Motions to Pay Filing Fee in Installments
 - Cannot be addressed until after the Plan is filed if proposing to pay through the Plan.

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Avoid Delays in the Courtroom. Try It (First), You Will Like It (More).

- If you want to present electronic evidence:
 - Schedule a time well in advance to become familiar with the Court's equipment. We will show you how to use it.
 - If you plan to use your own equipment (e.g., laptop, iPad, AppleTV), schedule a time to test the setup a week or two before the hearing.
 - You will rest more easily knowing your system is compatible.
 - It provides a chance to debug or polish the setup.
 - It will make setup on the day of the trial/hearing easier, faster, and more reliable.
 - Be in the courtroom at least one hour before the trial/hearing to set up.
- Remember, a delay due to technical problems still keeps the Judge waiting.

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How to Avoid Delays to Your Draft Orders.

- Be sure that your boilerplate language is accurate for the case.
 - E.g., draft orders will be rejected if the draft says no objection was filed or no hearing was held, when in fact an objection was filed or a hearing had been held.
- Follow instructions to correct.
 - Promptly follow the instructions given by the Clerk's Office on how to correct the draft order. Take notes of the instructions given by telephone. Feel free to call us if you do not understand our instructions. We are here to help.
 - Pay attention to the details when Clerk's Office calls and instructs how to amend a draft order.
- Include in the draft order the substance of the relief you requested in your motion.
 - Do not merely state "The Motion is granted."
 - Instead, state something like: "The Trustee's Motion to Compel (ECF 20) seeking production of the Debtor's 2012 federal tax return by May 15, 2014, is granted."

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How to Avoid Delays to Your Draft Orders.

- Properly format draft orders:
 - Submit draft orders as text-based .pdf document.
 - Avoid submitting image-based .pdf document.
 - Do NOT print a draft order, scan it, and upload it.
 - DO print directly to .pdf from your word processor.
 - Judges can edit a text-based .pdf draft order. They cannot edit image-based .pdf documents.
 - If the Judge has a minor tweak, it may save you the need to resubmit a new draft order.

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How to Avoid Delays to Your Draft Orders.

- Properly format draft orders:
 - 4 inch top margin for the Judge to insert signature block.
 - Properly e-signed by the submitting party.
 - Properly e-signed by the Trustee where applicable (virtually all instances in Chapter 13 cases).
- Key exceptions that do NOT require Chapter 13 Trustee signatures:
 - Motions to Extend Time to File Schedules.
 - Motions to Expedite Hearing.

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When You Cannot Reach CM/ECF

What to do.

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What to Do if CM/ECF is Inaccessible.

- Submit your document by alternate means.
 - Call the Clerk's Office ASAP to alert us to look for the submission.
- If you get it to the Clerk's Office, we will file it.
 - Preferred: Email the electronic document to the Case Administrator assigned to the case.
 - Hand-deliver to the Clerk's Office.
 - Fax it to the divisional office where the case is assigned.
 - Wichita: (785) 338-5911
 - Topeka: (316) 315-4111
 - Kansas City: (913) 735-2111
- Keep records that CM/ECF was inaccessible at the time. (E.g., notice that CM/ECF was temporarily down, or your law office's internet crashed.)

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What to Do if CM/ECF is Inaccessible.

- Service
 - Serve the document to all appropriate parties.
 - File a Certificate of Service that accurately reflects the method actually used to serve the document that was not electronically served.
 - D. Kan. LBR 5005.1 App. 1-01 § IX.B states that "Certificates of Service shall be in substantial compliance with D. Kan. LBR 9013.3."
 - D. Kan. LBR 9013.3 (a) requires a filer to "make proof of service of any pleading, motion, or other document required to be served, by filing a certificate. The certificate must either be included in the pleading or document served, or filed separately as soon as possible, and in any event before any action based on the service is requested or taken by the court."
 - Note: D. Kan. LBR 5005.1 App. 1-01 § IX.C "Nothing contained in this procedure [for electronic filing] relieves counsel of the burden of obtaining personal service under Fed. R. Bankr. P. 7004 or Fed. R. Civ. P. 4, where appropriate."

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What to Do if CM/ECF is Inaccessible.

- File a motion seeking appropriate relief from the presiding Bankruptcy Judge.
 - D. Kan. LBR 5005.1 App. 1-01 § XI (Technical Failures): “A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.”
 - D. Kan. LBR 5005.1 App. 1-01 § I.C “The court may, from time to time, and only in exceptional circumstances, relieve attorneys from the electronic filing requirement.”

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What to Do if CM/ECF is Inaccessible.

- Caveat: D. Kan. LBR 5005.1(c):
 - “All petitions, motions, memoranda of law, or other pleadings and documents filed with the court in a case assigned to the Electronic Filing System *must be filed electronically* unless otherwise permitted in these rules, the administrative procedures guide, or court authorization.” (emphasis added).
- Example: Local Rules no longer formally recognize fax filing, so if you submitted the document by facsimile, you may want to ask the Court to approve the “filing” method.

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Contact Us

We are ready to help.

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Bankruptcy Clerk's Office Contacts

- David Zimmerman, Clerk of the Bankruptcy Court, District of Kansas
 - (316) 315-4180
- Hugh Zavadil, Chief Deputy Clerk
 - (316) 315-4180
- Judy Cowger, Deputy-in-Charge, Kansas City (Kansas) Division
 - (913) 735-2112
- Melanie Davis, Deputy-in-Charge, Wichita Division
 - (316) 315-4112
- Donna Urbom-McClure, Deputy-in-Charge, Topeka Division
 - (785) 338-5912

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